

**In The Matter Of:**  
*United States vs.*  
*PFC Bradley E. Manning*

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*Vol. 22*  
*July 26, 2013*  
*UNOFFICIAL DRAFT - 07/26/13 Afternoon Session*

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VOLUME XXII

IN THE UNITED STATES ARMY

UNITED STATES

VS.

MANNING, Bradley E., Pfc. COURT-MARTIAL

U.S. Army, xxx-xx-9504

Headquarters and Headquarters Company,

U.S. Army Garrison,

Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

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The Hearing in the above-entitled matter  
was continued on Friday, July 26, 2013, at 3:37 p.m.,  
at Fort Meade, Maryland, before the Honorable Colonel  
Denise Lind, Judge.

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1 APPEARANCES:

2  
3 ON BEHALF OF GOVERNMENT:

4 MAJOR ASHDEN FEIN

5 CAPTAIN JOSEPH MORROW

6 CAPTAIN ANGEL OVERGAARD

7 CAPTAIN HUNTER WHYTE

8 CAPTAIN ALEXANDER von Elten

9  
10 ON BEHALF OF ACCUSED:

11 DAVID COOMBS

12 CAPTAIN JOSHUA TOOMAN

13 MAJOR THOMAS HURLEY

1 PROCEEDINGS

2 THE CLERK: All rise.

3 THE COURT: Please be seated. The court is  
4 called to order. Let the record reflect all parties  
5 present when the court last recessed are again present  
6 in court.

7 Before we proceed, I do want to clear up  
8 one thing in the record. Earlier in the day, I made an  
9 order specifically excluding an individual. I  
10 neglected to mention that before making that order, I  
11 showed counsel for both sides the reason I made that  
12 order and I neglected to see if either side had any  
13 objection to that.

14 MR. FEIN: The United States does not  
15 object, Your Honor.

16 MR. COOMBS: No, Your Honor.

17 THE COURT: Did you find as a government --  
18 well, first of all, is there anything else we need to  
19 address before we proceed to the government's rebuttal  
20 argument?

21 MR. FEIN: No, Your Honor.

1 MR. COOMBS: No, ma'am.

2 THE COURT: All right. Government?

3 MR. FEIN: Your Honor, the focus in your  
4 deliberations should be on the evidence, the testimony  
5 you heard and the documentary and -- well, essentially  
6 all the documentary evidence otherwise it's in digital  
7 form from the physical evidence to review.

8 Prior to going into deliberation, Your  
9 Honor, the United States would like to offer a few key  
10 dates, some key dates to put all of the evidence and  
11 the testimony in its proper place within a timeline.

12 First, Your Honor, Pfc. Manning arrived in  
13 Iraq on or about 28, October 2009. If there is ever a  
14 question, Your Honor, during your deliberations on when  
15 Private First Class Manning was in Iraq and was not,  
16 was at FOB and was not, Prosecution Exhibit 22. Those  
17 are the JAMS (phonetic) records, the records that a  
18 soldier -- that accounts for when a soldier uses their  
19 ID card to go to the mess hall, so on and so forth.

20 Next, Your Honor, mid November 2009, that's  
21 the testimony we heard of when Pfc. Manning started

1 working in the SCIF without someone on his left and  
2 right. It's the Riptow (phonetic) Third Brigade 87.

3 26, November 2009, Your Honor, that's  
4 Thanksgiving. 26, November 2009. That's when Private  
5 First Class Manning told Adrian Lamo he started helping  
6 WikiLeaks, around Thanksgiving of 2009.

7 28, November, 2009, Your Honor, that's the  
8 first search for an item that's on the WikiLeaks most  
9 wanted list from Prosecution Exhibit 81.

10 29, November 2009, that's the date that the  
11 contact list -- the contact information was created on  
12 his external harddrive for WikiLeaks.

13 Then, Your Honor, 1, December 2009. The  
14 first search for WikiLeaks on SIPRNET -- at least on  
15 Intelink that's recorded. Again, Prosecution  
16 Exhibit 81.

17 Your Honor, the next key date is 15,  
18 December, 2009. As you've already heard today from  
19 Mr. Coombs, the date that the BE22PAX.zip file was  
20 found on Jason Katz' computer on the date of its  
21 creation.

1                   Another key date, Your Honor from the defense  
2   24, December 2009. Christmas Eve of 2009. You have  
3   before you -- you will when you deliberate the  
4   significant activity report pulled by Special Agent  
5   Shaver on behalf of the defense. That's a key date,  
6   Your Honor. The reason that's a key date because if  
7   you look at Prosecution Exhibit 81, the Intelink log,  
8   you'll find that within 30 minutes of a shift change at  
9   22:00 that day, Private First Class Manning was not  
10   searching for anything related to that SigAct or any  
11   other item that might have caused him to have a crisis  
12   of conscious.

13                   What you'll find, Your Honor, is that he was  
14   conducting searches for information relating to GITMO  
15   and detainees from the WikiLeaks most wanted list on  
16   24, December 2009 and that's at lines 173 through  
17   178 of Prosecution Exhibit 81. Those same searches or  
18   similar searches since 1, December.

19                   Then, Your Honor, early January 2010 --

20                   THE COURT: That was 117 through what?

21                   MR. FEIN: I'm sorry, ma'am. 173 through



1 178 --

2 THE COURT: Okay.

3 MR. FEIN: -- of PE 81. Then, Your Honor,  
4 early January 2010. Early January 2010 is when Private  
5 First Class Manning stole the SigActs portions of the  
6 CIDNE I and CIDNE A databases.

7 14, February 2010. 14, February is when  
8 Private First Class Manning returned from R&R.

9 And then 15, February 2010 when the first  
10 evidence of a CD being burned on his SIPRNET computer  
11 and inserted into his personal MAC. 15, February 2010  
12 and on that, Your Honor, you'll see the Apache video,  
13 the SigAct designator for the Apache video, Reykjavik  
14 13 and other information relating to WikiLeaks and to  
15 Iceland.

16 Your Honor, 18, February 2010, that is the  
17 date that WikiLeaks released the Reykjavik 13 cable.

18 THE COURT: February?

19 MR. FEIN: Yes, ma'am. 18, February 2010.  
20 So three days after burning onto a CD and that is when  
21 Private First Class Manning, at least then, would have

1    seen the direct repercussions of his actions or, in his  
2    own words, of an ambassador potentially being fired  
3    from the Longwood chess.

4                   Your Honor, 27, February 2010. 27,  
5    February 2010 is the incident where the Iraqi police  
6    arrested several individuals at a printing press. That  
7    is the date of the evidence the defense elicited or  
8    attempted to elicit from Sergeant Sadtler.

9                   Now, you heard, Your Honor, from Sergeant  
10   Sadtler -- and that's the only evidence you heard -- of  
11   Private First Class Manning's reaction and that's from  
12   27, February 2010. Now, he didn't remember the exact  
13   date, but that is the date of the SigAct that you have  
14   before you.

15                  And in his chats, Your Honor, Pfc. Manning  
16   calls that event "the thing that got me the most that  
17   made me rethink the world more than anything." And he  
18   said that with Lamo. That event occurred on 27,  
19   February 2010.

20                  And then, Your Honor, early March 2010 are  
21   the chats between Pfc. Manning and Julian Assange.

1 Those are the key dates, Your Honor.

2 Now, there's disclosures that the court has  
3 taken judicial notice of, but those are the key dates  
4 when it comes to motive, when it comes to intent and,  
5 ultimately, in proving these offenses. Before  
6 continuing, Your Honor, just to, I guess, clarify some  
7 potential inaccuracies.

8 First, Adam Gadahn is the enemy who also  
9 helps the enemy. There is a difference between wiping,  
10 forensically wiping a computer and reimaging a  
11 computer. You heard testimony from Special Agent  
12 Shaver and Mr. Johnson that wiping or clearing,  
13 forensically, your computer is wiping all of the free  
14 space. Everything that has been deleted that's still  
15 on the computer is making it 1s and 0s, untraceable.

16 Reimaging a computer, Your Honor, you heard  
17 that in this court-martial from Mr. Milliman and others  
18 talking about the DCGS 8 computers and that's because  
19 when the computer were malfunctioning, Mr. Milliman  
20 testified that he took the harddrive out of the  
21 computers and reimaged them. He made a copy of the

1    harddrive as it sat in order to allow individuals to  
2    continue working and then he would use a CD to take  
3    information on the desktop or in the My Documents of  
4    the old computer and copy it over. That's where you  
5    also heard of any backing up that occurred in the  
6    T-SCIF.

7                    You also heard, Your Honor, that when a  
8    computer is reimaged, the only information that's  
9    contained on it is what would have ever been on the  
10   copy from before. So when Mr. Milliman reimaged it  
11   from a baseline image, none of the old material would  
12   have come on that image.

13                   THE COURT: Say that one more time.

14                   MR. FEIN: Yes, ma'am. You heard from  
15   Mr. Milliman that when he did the reimaging, Your  
16   Honor, he copied from the baseline DCGS 8 image, the  
17   image he received from Camp Slayer.

18                   So what that means, Your Honor, is that the  
19   old harddrive that's pulled out, the one that is being  
20   replaced, that information is essentially lost except  
21   for what Mr. Milliman copied over because the new image

1 came from Camp Slayer which is also why the court has  
2 no evidence before it and the investigators could find  
3 no evidence of any activity on the .22 or .40  
4 hard-drives prior to them being reimaged in March of  
5 2010.

6 Now, Your Honor, I'd like to focus on the  
7 Granai airstrike video in the fraud investigation,  
8 although the two terms are synonymous here. Two  
9 different types -- ultimately, specification 11 and 10  
10 of charge 2.

11 In the Defense's presentation of evidence,  
12 they seem to discount one factor and that is that  
13 Private First Class Manning admitted to the Granai --  
14 releasing the entire Granai airstrike video in the  
15 investigation.

16 Defense claims there's no link between Jason  
17 Katz and Pfc. Manning except for two major factors.  
18 One, WikiLeaks. WikiLeaks is a link between Jason Katz  
19 and Pfc. Manning. Private First Class Manning used  
20 WikiLeaks as his platform to release information.  
21 Jason Katz had that video, the same video that they

1     tweeted about less than one month later that they  
2     needed help decrypting. And you heard through  
3     stipulations of expected testimony from the B&L  
4     employees that password "cracking" software was  
5     included or was installed on Jason Katz's computer and  
6     from Special Agent Shaver.

7                 Also, the second thing that is a link between  
8     the two is the actual video itself, a forensic copy of  
9     what was on the CentCom server.

10                There's also no evidence, Your Honor, that  
11     Jason Katz even had access to SIPRNET. This is a  
12     fanciful conjecture that Jason Katz is the one who  
13     compromised the video, especially if Pfc. Manning  
14     admitted to it.

15                THE COURT: Let me ask you a question.

16                MR. FEIN: Yes, ma'am.

17                THE COURT: So the government is going  
18     forward on the theory that this -- or on the charge  
19     dates in specification 11; is that correct?

20                MR. FEIN: Yes, ma'am.

21                THE COURT: Okay. Go ahead.

1                   MR. FEIN: Your Honor, Bates number  
2   00124349. 124349.

3                   THE COURT: Say that one more time.

4                   MR. FEIN: Yes, ma'am. Actually, to be  
5   easier, Your Honor, Defense Exhibit Juliet, page 67.

6                   THE COURT: That's more in my lane.

7                   MR. FEIN: Yes, ma'am. Defense Exhibit  
8   Juliet, page 67. Defense Exhibit Juliet is the  
9   forensic report for Private First Class Manning's  
10   personal Macintosh computer. Page 67 of that report,  
11   Your Honor, created by Mr. Johnson, shows in a screen  
12   shot from EnCase the uploads through the WikiLeaks  
13   submission system to WikiLeaks. At least the screen  
14   shot shows four different files and four out of five as  
15   the text on that document shows and those files are  
16   called fraud.part1.rar.nc. I'm just reading off the  
17   actual exhibit, Your Honor. It says year 2010, month  
18   4, date 11 and then later down the road it says date  
19   12th.

20                   What this shows, Your Honor, is that  
21   Private First Class Manning transmitted the actual

1 FARAH investigation that he admitted to Adrian Lamo  
2 that he compromised in the same admission of the video  
3 on 11 and 12 April 2010. Forensic evidence shows that  
4 date.

5 Yet, Your Honor, the Defense wants you to  
6 believe that Pfc. Manning looked at the Granai airstrike  
7 video, the fraud video, on 17, April 2010 because of  
8 the TGT1.wmv file, that same file that was found in  
9 that NT user.dat file which means that it was opened,  
10 it was not encrypted and that, Your Honor, happened on  
11 17 April.

12 So Private First Class Manning had already  
13 transmitted everything he took from the CentCom share  
14 folder, at least that he downloaded on 10, April 2010  
15 on 11-12 April and then found on the T-drive the share  
16 folder or at least viewed a video called tgt1.wmv and  
17 that was five days after comprising the remaining  
18 portion of the FARAH investigation.

19 Your Honor, admission of the compromise of  
20 the video and upload of the investigation less the  
21 video on 11 and 12 April and no evidence, no forensic



1 evidence, Your Honor, of a video being accessed by Pfc.  
2 Manning between 1, December 2009 and onward.

3 The evidence, Your Honor, is that he took  
4 the video before 1, December 2009. He transferred it  
5 to WikiLeaks and it ultimately ended up on Jason Katz's  
6 computer before 15, December 2009 and John Katz had it  
7 on his computer.

8 That is the exact video that Pfc. Manning  
9 accessed or admitted to because it has the same hash  
10 value that was found on the CentCom portal and he did  
11 admit he had been helping WikiLeaks since Thanksgiving  
12 of 2009.

13 Next, Your Honor, I would like to discuss  
14 Mr. Lewis, Mr. Daniel Lewis's opinion -- not Getz --  
15 and why it should be relied upon. The Defenses argue  
16 that Mr. Lewis said he was not experienced in valuing  
17 information, but Mr. Lewis testified that, although  
18 he's not an expert in valuing a random document, he was  
19 an expert in what the enemy -- excuse me, Your Honor,  
20 the foreign intelligence services paid for U.S.  
21 government information, specifically classified

1 information, and what types of information based off  
2 those countries, based off his experience.

3               So what was his experience, Your Honor? He  
4 testified that in nearly 30 years of experience in the  
5 counter intelligence field. Mr. Lewis is one of the  
6 top ten most experienced counter intelligence  
7 professionals in the Department of Defense and the most  
8 senior one in the DIA. He investigated espionage cases  
9 at department of army national level organizations as a  
10 soldier and as a civilian for 15 years as an actual  
11 investigator. He had won the DOD investigator of the  
12 year award twice, for two different cases involving the  
13 compromise of classified information, George Trofimoff  
14 and Sergeant Boone to foreign intelligence services and  
15 what those agencies paid for that information.

16               He's taught courses on espionage  
17 investigations for over 20 years and he has supervised  
18 espionage investigations and operations as a director  
19 of counter espionage section at DIA for the last many  
20 years. He's relied upon to brief the senior leader of  
21 the Department of Defense on active operations and, as

1 he testified, most all those operations deal with the  
2 exchange of money for information.

3 Mr. Lewis's expertise is trusted by those  
4 senior government officials and in reaching those  
5 determinations, Your Honor, Mr. Lewis offered a  
6 conservative valuation, always on the low side,  
7 describing how blocks of information -- his terms --  
8 block of information are more valuable than even  
9 individual pieces of information.

10 He also stated that based on his experience  
11 that he could definitely evaluate how much an adversary  
12 would pay for specific types of information. So  
13 although he can't necessarily testify about the four  
14 corners of a document, he can look at a document, look  
15 at the contents of the document and say how much an  
16 organization would pay for that type of information.

17 Your Honor, that is the thieves' market.  
18 The thieves' is not an open market where two  
19 individuals necessarily negotiate. It's a market based  
20 on theft. It's a market based off a seller willing to  
21 buy something that should not be sold.

1                   He also testified that the type of  
2                   information that they typically used in these  
3                   operations are real information and there's different  
4                   sensitivities involved in that.

5                   Finally, Your Honor, in reference to  
6                   Mr. Lewis's way of evaluating, even Private First Class  
7                   Manning recognizes in his chats with Adrian Lamo  
8                   talking about how he could have made bank if he chose  
9                   to sell it to, he said, Russia and China.

10                  Your Honor, for the 793 offenses within  
11                  charge 2, the court's instructions define reason to  
12                  believe and show that the United States has to prove  
13                  that Pfc. Manning had the reason to believe that he  
14                  communicated -- the information he communicated could  
15                  be used to injure the United States for the advantage  
16                  of a foreign nation whether he had the reason to  
17                  believe that.

18                  You heard testimony from the different  
19                  subject matter experts from each organization based off  
20                  of 793 and then also the 1030 offense. It explains  
21                  exactly what type of information that is, that you

1 would have reason to believe could cause harm. The  
2 OCAs testified about why the information could cause  
3 harm. Defense Exhibit O, Oscar. Read the Admiral  
4 Donegan memo.

5 Your Honor, that memo is quite important in  
6 this case. As Defense pointed out, it's a memo that  
7 shows that there are varying opinions on classification  
8 even within the United States government. What that  
9 memo exemplifies is that not at all times does an OCA  
10 say what we presume is classified is actually  
11 classified and that memo signed by the J3 head  
12 operations officer for U.S. CentCom said that that  
13 video did not contain equities that rose to the level  
14 of classified information. Your Honor, that is  
15 directly in sync with the testimony of CW5 John LeRue.  
16 Chief LeRue testified that there are types of  
17 information in the Apache video that we purposely  
18 retained and do not make publicly available the TTPs,  
19 how our pilots engage targets, how they identify  
20 targets, the laser technology, the heads-up displays.  
21 In that pilot, you keep it on SIPRNET because they're

1 not qualified to make the determination whether it's  
2 classified or not.

3 So the system works and has worked in this  
4 case. It is sensitive. It is closely held. It was on  
5 SIPRNET. It was not publicly available. The video was  
6 not publicly available. And then OCA reviewed it and  
7 made a determination it was not classified.

8 The testimony of the subject matter experts  
9 in the OCAs aren't based off mere buzz words. They're  
10 based off doctrinal terms, doctrinal terms that are in  
11 every classification guide and are taught all the way  
12 down to the most junior soldier, especially Intel  
13 analysts.

14 TTPs, how we fight our battles. That's the  
15 type of information -- and the United States agrees  
16 with the Defense, Your Honor. The court should read  
17 every single charge document, especially because it's  
18 in evidence, look at them, look at the words on the  
19 page and see exactly what is in those documents on  
20 Private First Class Manning compromised.

21 When it comes to the SigActs, these are

1 SigActs that he used on a daily basis. It's not just  
2 mere information that is available to the public. It  
3 is the exact fire team, squad, platoon, company  
4 battalion, brigade and division, where they were, what  
5 they're doing, how they did it. Yes, there as an IED,  
6 but the enemy doesn't know the internal operations of  
7 that squad and that fire team on how they secured the  
8 objective, how they evacuated their own. And only --  
9 the only individual, Your Honor, that would have known  
10 at least on the ground at that moment would have been,  
11 let's say, the IED trigger puller who survived. Yes,  
12 he would have had eyes on that squad and seen what they  
13 did. He wouldn't have seen what happened behind the  
14 Humvee, let alone all of his fellow cohorts wouldn't  
15 have known unless they were there. The village next to  
16 him wouldn't have known what we did, let alone in  
17 another theater of operations, let alone the entire  
18 world that includes Al Qaeda and Al Qaeda on the  
19 Arabian Peninsula that knows how we fight our battles  
20 in Iraq and Afghanistan. For that information, Your  
21 Honor, Private First Class Manning was trained as

1     valuable. It's the type of information that the enemy  
2     seeks, they want worldwide and that was given to them  
3     in searchable format through the SigActs and Department  
4     of State information.

5                 Your Honor, the Defense seems to argue that  
6     just because there is some information in a classified  
7     or sensitive document, that means it's not closely held  
8     because some information in there. For every  
9     specification charged under 18USC793 and the 1030  
10    offense, there's no evidence either from stipulations  
11    of testimony or live witnesses, Colonel Davis,  
12    Mr. Hall, Mr. Daniel, Mr. Finkel's book that shows that  
13    all of the information contained within those documents  
14    was publicly available. The Apache video was a video.  
15    It had visual information that was sensitive.

16                Your Honor, specifically, although I know I  
17    just spoke something about the CIDNE I and CIDNE A  
18    SigActs, the Defense brought up the CALL witness from  
19    the Center of Army Lessons Learned. Your Honor, when  
20    you review Defense Exhibit alpha in your deliberations  
21    and you read exactly what that witness would have said



1 if they testified, you'll see, Your Honor, that based  
2 off questions from the defense multiple times, it was  
3 asking if CALL had done any lessons learned based off  
4 the disclosures to WikiLeaks.

5 The focus was disclosures to WikiLeaks. The  
6 questions weren't has the Army changed its TTPs based  
7 off of battlefield disclosures. It wasn't has the  
8 Department of Defense or the Department of State  
9 changed what they do. It was has the call -- has the  
10 Center of Army Lessons Learned done a comprehensive  
11 review of the information or specifically how we handle  
12 classified information. That was one of the questions,  
13 has CALL actually looked at how we handle classified  
14 information, are there any changes. Are any critical  
15 Army TTPs or vulnerabilities based off of the  
16 disclosure? And, yes, the Center of Army Lessons  
17 Learned hadn't done that, but that is not evidence,  
18 Your Honor, that there was no effect or useful effect  
19 for the enemy. Excuse me, Your Honor. This is not the  
20 actual effect, if there was or was not some.

21 The testimony from the CALL witness, Your

1 Honor, has no bearing on whether the SigActs were  
2 useful to the enemy. And, most importantly, Your  
3 Honor, Private First Class Manning's training is the  
4 most insightful there. He was trained on their  
5 usefulness and how to protect them.

6 Your Honor, just to correct one thing I just  
7 I said, I said Defense Exhibit alpha. It's actually, I  
8 think, bravo. Defense Exhibit bravo.

9 Next, Your Honor, The ACIC document. Your  
10 Honor, the ACIC document was produced by an  
11 organization whose specific purpose is to identify  
12 potential threats and threats within the United States  
13 Army and with that exact document there's the cyber  
14 threats.

15 That document was not, nor was there any  
16 testimony from a U.S. government employee based off all  
17 open source information. There is a table of contents  
18 with a classified version and a court can see by  
19 reviewing it it was sourced from across the  
20 intelligence community. Professor Benkler testified  
21 that, in his opinion, it was based off open source

1 information, but that document was part of an official  
2 government process from an organization that focused on  
3 these types of threats.

4 In reference to the detainee assessments,  
5 Your Honor, Colonel Davis did testify that those  
6 detainee assessments has no useful purpose for him, the  
7 chief prosecutor. But he did recognize that they were  
8 used in no pros, non-prosecution decisions. They were  
9 the cover sheets that he relied on in order to  
10 determine whether he wanted to pack it up, sign off on  
11 it or not. He found no useful version because, just  
12 like any other attorney he relies on the evidence, the  
13 evidence in this case or in his cases to make his  
14 decisions.

15 Next, Your Honor, AR25-2 in the 1030  
16 violation, exceeding authorized access. The United  
17 States would argue that in your deliberations you  
18 should not be distracted from the different red  
19 herrings the defense appears to be throwing out about  
20 the programs and the access, specifically on the DCGS  
21 8 computer. The bottom line, Your Honor, is that

1 everyone who testified in this court-martial said they  
2 had to go to Mr. Milliman, the DCGS 8 contractor, in  
3 order to get approval to make changes, introduce  
4 software or they had problems and Mr. Milliman  
5 testified he never heard of Wget before this which  
6 leads to only one conclusion, Private First Class  
7 Manning never went to Mr. Milliman to ask if he could  
8 install -- excuse me, copy over a copy of Wget.

9 Yes, Your Honor, there is evidence that  
10 individuals copy programs onto the computer, but you  
11 heard from Mr. Milliman, because he was one FSC  
12 contractor for multiple posts or multiple FOBs -- when  
13 he had another FOB, he would get calls and say, yes,  
14 you can do that and get a voco (phonetic) for that.

15 And you also did not hear any evidence, Your  
16 Honor, of any unauthorized programs being installed by  
17 anyone. MIRC Chat was authorized.

18 Mr. Kitts (phonetic) testified that mIRC Chat  
19 was not necessarily in the baseline, but he also  
20 testified that he remembered a technical bulletin went  
21 from the DCGS A program management office out to all

1 the contractors. Mr. Milliman corroborated that by  
2 saying he knew that he was authorized to install mIRC  
3 Chat. And regardless of that, Your Honor, from the  
4 soldiers' point of view, if Mr. Milliman installed it,  
5 it was authorized. It was his responsibility to make  
6 that determination and that did not occur from Wget.

7 Also, Your Honor, you heard testimony about  
8 mIRC Chat. You heard testimony, although not programs,  
9 about videos and music and games. What you heard, Your  
10 Honor, is that there were purposes for those,  
11 legitimate purposes that the command was tracking.  
12 MIRC Chat was used to communicate up, down, left and  
13 right.

14 Colonel Miller testified about the benefits  
15 of mIRC Chat and also testified about, although he saw  
16 it in his periphery, why he didn't stop, why he didn't  
17 stop video games, why he didn't stop music and videos  
18 for being allowed on SIPRNET. Because he saw that the  
19 soldiers sat on the file all day and did not leave,  
20 that it gave him that break in place in order to relax  
21 and continue working.

1           You also did not or you did hear testimony  
2   that the prohibition was on introduction and although  
3   Captain Cherepko said they started deleting video  
4   games, music and videos from their share drive, it kept  
5   populating on. But you heard no evidence of anyone  
6   introducing the material. You did hear evidence that  
7   it was scattered throughout the network and he kept  
8   trying to find where it was and you also heard  
9   testimony from Captain Cherepko on why, why he deleted  
10   it.

11           THE COURT: Let me just stop you for a  
12   minute.

13           MR. FEIN: Yes, ma'am.

14           THE COURT: I'm confused. If it went away  
15   and came back on, how was it not installed?

16           MR. FEIN: Well, unfortunately, ma'am, you  
17   didn't hear evidence on anyone moving it onto their  
18   computer. The Defense wants that to infer that that's  
19   how it happened. Yes, Your Honor, that is a  
20   possibility. There was no physical limitation. What  
21   Captain Cherepko testified about was that the Third

1 Brigade 82nd had a lot of different versions and  
2 different folders and that it is possible for  
3 individuals to start moving them over to different  
4 folders. He wasn't able to find them all, Your Honor.

5 But again, Your Honor, it goes to the red  
6 herring. You heard from the brigade commander that  
7 talked about why he did not see an issue with those.  
8 He did talk about at what point he did eventually say  
9 let's remove this material. It wasn't because it  
10 violated the Army regulation because it didn't. It  
11 wasn't because it was impacting their mission, the  
12 soldiers sitting in front of computers. It was because  
13 it was impacting his connectivity and when Captain  
14 Cherepko, as he testified started deleting the material  
15 because they were having bandwidth and other issues  
16 with the servers which is why they started deleting it  
17 and put out messages for all the sections to not allow  
18 that information. None of that, Your Honor, had to do  
19 with a solder taking a program that they downloaded off  
20 the Internet, a program no one else had heard about,  
21 moving it over to their SIPR computer, dragging it

1 over, figuring out how to program that program, how to  
2 make that program do what they want and run that  
3 program from a SIPR computer.

4 Wget is not comparable to those types of  
5 programs. It is free ware as I just mentioned that you  
6 download off the NIPRNET. Sergeant Shaver and Chief  
7 Royard (phonetic) gave in-depth explanations about  
8 Wget, that there's no legitimate purpose of having Wget  
9 on a computer except for from law enforcement purposes  
10 dealing with Internet crimes or doing penetration  
11 testing acting as the enemy of the United States.

12 Private First Class Manning knew he was not  
13 allowed to add programs to the computer. Mr. Madaras  
14 testified that Pfc. Manning was at DCGS training before  
15 they deployed and were told you have to go near FSC  
16 before you do anything on your computer.

17 If that wasn't enough, Your Honor, you heard  
18 the testimony that within a month of the brigade being  
19 there Mr. Milliman sat everyone down. He said this is  
20 common because when brigades come in, the S6 sections  
21 believe they own by that, via administrators, control



1    what programs are or are not installed on all of the  
2    computers including DCGS A and he said that panel was  
3    always followed and the unit showed up.  There was  
4    always a misunderstanding, he always clarified it and  
5    then it didn't happen again.  And that is what you  
6    heard.  And how did that come up, Your Honor?  Earlier,  
7    you heard the defense talk about that even the S-6  
8    section was password cracking.

9                   Well, Your Honor, Mr. Milliman talked about  
10   that at the beginning of the deployment when the  
11   S-6 who was authorized as administrators to get onto  
12   every computer.  They are the individuals authorized  
13   under the reg for doing that until Mr. Milliman said  
14   you don't understand, I'm the DCGS A FSE, I own these  
15   and did not happen again.

16                   Your Honor, any misunderstandings would have  
17   been resolved, at a minimum, in the first 30 days.  But  
18   it definitely would have been resolved, Your Honor, by  
19   March 2010 when Private First Class Manning decided to  
20   move Wget from NIPR, that he downloaded to NIPR onto  
21   his SIPR computer.

1                   Even though they're analysts, Your Honor, the  
2   T-SCIF testified that people needed their computers  
3   fixed. Even once they're down ranged, they went to  
4   Milliman. Even Mr. Milliman testified that Pfc. Manning  
5   went to him for certain aspects of what he needed done.

6                   Your Honor, there's no evidence that Pfc.  
7   Manning used Wget for a legitimate purpose. He only  
8   used it to commit the crimes he had been charged with  
9   and he thought that was okay.

10                  Your Honor, in reference to the AUP, the  
11   Defense is absolutely right, the government has not  
12   produced a signed AUP and the court has already heard  
13   testimony on why that was. Captain Cherepko stated  
14   after they redeployed that summer after Private First  
15   Class Manning was first detained and in the summer of  
16   2010 before they redeployed, they destroyed all  
17   paperwork as part of their normal business practice.  
18   They do not bring the AUPs back with them and that was  
19   in the summer of 2010.

20                  He also testified, to the best of his  
21   recollection, what the AUP said or did not say and the

1 best of his recollection was it said you are not  
2 authorized to install programs with a .exe file type,  
3 executable programs.

4 Your Honor, in Captain Kay (phonetic),  
5 Captain Kay is actually -- could be one of the best  
6 witnesses, when you review your notes, on what was or  
7 wasn't authorized and what to do. He even said, after  
8 just being there for three weeks, that if you needed  
9 something with the computer done, you went to  
10 Mr. Milliman.

11 Enter now the global address list book, the  
12 theft, specification 16. There's no legitimate reason  
13 to download the GAL. According to Chief Nixon, if you  
14 download E-mail addresses, the network is down, you  
15 can't send E-mails anyway. You have to have the  
16 network working.

17 The excuse, Your Honor, that Pfc. Manning  
18 download GAL just to see if he could do it, honestly,  
19 doesn't make sense and there is no evidence to support  
20 that. Why would one see if they can download the GAL  
21 on their NIPR computer and then move it to over to

1     their personal computer.

2                     If you're simply trying to test your own  
3     skills which, again, the government contends is not  
4     authorized. But even if you were to believe that, Your  
5     Honor, there would be no legitimate reason to take all  
6     of that PII of 74,000 individuals and move it to your  
7     personal computer. That, Your Honor, was the same MO  
8     that Private First Class Manning followed when he took  
9     all the classified information from SIPRNET.

10                    The only evidence the government doesn't  
11     have, which is why it's not charged, is that he  
12     transmitted it to WikiLeaks. Private First Class  
13     Manning even understood how spearfishing is a threat.  
14     The government is not contending that spearfishing  
15     occurred based off of these E-mails being on Private  
16     First Class Manning's computer. But he knew, through  
17     the Longwood chess, what spearfishing was and the  
18     dangers with spearfishing, such a unique term, yet he  
19     took the E-mails from NIPR and put them on his personal  
20     computer.

21                    As far as the evaluation, Your Honor, there's

1 one other piece of the evaluation just to highlight.  
2 Chief Nixon, Your Honor, testified about the CAL for  
3 the CAL, the C-A-L, Your Honor, the client access  
4 license.

5 This is the required Microsoft office license  
6 that the United States Army pays per user when you bill  
7 an E-mail account for them and each count, he testified  
8 costs the Army between \$35 and \$65 per user.

9 Now, Your Honor, he also testified that it's  
10 also based off each computer. But just users alone,  
11 Your Honor, 74,000 user E-mails and a CAL for each one,  
12 well, that's well over \$1,000, Your Honor.

13 THE COURT: Well, let's go back to my old  
14 order there. We were talking about the users were not  
15 prohibited from using the GAL, right?

16 That proper evaluation based on my order, I  
17 don't think so.

18 MR. FEIN: Yes, ma'am. Could I have a  
19 moment, Your Honor?

20 THE COURT: Yes.

21 (Pause.)

1 MR. FEIN: May I have an in-place recess?

2 THE COURT: Yes.

3 (Pause.)

4 MR. FEIN: Specifically, Your Honor, page 8  
5 of your order, the court held that the cost of creating  
6 the information in the charge database or records is  
7 proper evidence, the cost of creation.

8 Chief Nixon testified, Your Honor, that the  
9 CAL, the client access license, had to be purchased in  
10 order to create this account to receive it. It's  
11 specifically what it's for. You cannot have an E-mail  
12 account without a CAL.

13 THE COURT: Major Fein, I'll allow you to  
14 do the input, the data entry and all of that, but not  
15 the CALs.

16 MR. FEIN: Yes, ma'am.

17 Your Honor, from the Defense's closing  
18 argument, it appears that the Defense essentially wants  
19 to shift blame to other people. First, that's pretty  
20 evident when it's apparently the State Department's  
21 fault that they didn't have more security on a SIPRNET

1 computer system, a SIPRNET where everyone has to have a  
2 security clearance, sign up for a user account and have  
3 access to it when he stole their database because they  
4 put their info on the SIPRNET without additional  
5 security measures or is the unit's fault because Pfc.  
6 Manning used Wget because they had movies, music and  
7 mIRC Chat. So he was able to use Wget.

8 Your Honor, we -- at least the United  
9 States Army, live in a system based off trust,  
10 individual responsibility. That's true with the  
11 non-disclosure agreements and it's true for  
12 Mr. Weaver's testimony. Mr. Weaver testifying that the  
13 Army regulation and the AUPs can't cover the  
14 entire -- the entire world in scope of what can and  
15 cannot happen. It's done on a broad -- well, as  
16 detailed as possible without having be impermissible  
17 for being able to use an information system and Private  
18 First Class Manning knew this, Your Honor. He knew the  
19 weaknesses in the system and he knew how to penetrate  
20 those weakness. Those are his own words, how to  
21 penetrate our systems.

1                   He admitted to taking even more cautious  
2 measures with this information when he chatted with  
3 Adrian Lamo. He admitted to penetrating U.S.  
4 classified networks, transferring that data from those  
5 networks over the Internet on new commercial networks,  
6 sorting the data, compressing and encrypting it.

7                   With Adrian Lamo, he said I have been  
8 penetrated. He wrote star.smil.mil networks for over a  
9 year. His words, Your Honor. These aren't the words  
10 of a well intentioned or naive soldier. This is a  
11 soldier that knew exactly what he was doing was against  
12 the rules and against his oath as a soldier and  
13 especially against his nondisclosure agreement, his  
14 understanding -- his understanding of how to handle  
15 classified information the access that this government  
16 gave him on smil.mil networks, the secret networks.  
17 He had been penetrating them for over a year as well as  
18 s.gov.gov. Not just the military networks, the general  
19 U.S. government networks.

20                   He says "I've created a massive mess and no  
21 one has a clue because 95 percent of their efforts are



1 on physical security of classified networks and  
2 managing op sec, unclassified networks." All that's on  
3 page 8. Prosecution Exhibit 30, page 8.

4 The United States agrees with the Defense.  
5 You should read the entire chat logs from front to  
6 back. What you'll see from reading that is these are  
7 the types of terms when he's explaining his actions of  
8 what he was doing. This is the type of activities of  
9 one who has a general evil intent and not well  
10 intentioned.

11 "Everyone just sat on their work stations  
12 watching music videos, car chases, buildings exploding  
13 and running more stuff to DVDs and CDs, a culture fed  
14 opportunity."

15 Of course, the opportunity he's talking about  
16 is penetrating networks and taking classified  
17 information. That's page 38, Your Honor.

18 The network was upgraded and patched up so  
19 many times and systems will go down, logs will be lost  
20 and when moved or upgraded, hard-drives would be  
21 zeroed.

1                   Recognizing the limitations within our own  
2 network and with his own command and how he can exploit  
3 them. It's impossible to trace much of these on field  
4 networks. He knew he was on a field network. He  
5 thought he was not being traced who would honestly  
6 expect so much information to be ex-filtrated from a  
7 field network. He identified a weakness, he exploited  
8 that weakness, Your Honor. Not well intentioned.

9                   Your Honor, worldwide distribution, that was  
10 his goal. Worldwide includes the enemy, Article 104.  
11 He wanted the whole world to see. There's no question  
12 about that, Your Honor. That's not in dispute. Pfc.  
13 Manning knew the entire world included the enemy from  
14 his training which, shown through his training  
15 experience, that he had actual knowledge of, by giving  
16 intelligence to WikiLeaks, he was giving it to the  
17 enemy and specifically Al Qaeda and Al Qaeda of the  
18 Arabian peninsula.

19                   The OSC logs, Your Honor. Prosecution  
20 Exhibit 141. PE 141, open source center logs. Same  
21 logs that were on the sorted WikiLeaks most wanted list

1 of the Defense's of both database to harvest. You'll  
2 see there, Your Honor, that the accused viewed  
3 intelligence products of the enemy including AQAP and  
4 you'll see that he viewed intelligence products -- that  
5 terrorists use the Internet, the titles that include  
6 Terrorists Using the Internet.

7 Your Honor, also please look at the wire  
8 logs, Prosecution Exhibit 136. 136. When you look at  
9 Prosecution Exhibit 136, Your Honor, you'll see, among  
10 other things, that he viewed intelligence products  
11 about specific terrorists using the Internet. He knew  
12 terrorists would get the information, but he was more  
13 concerned about protecting himself than the information  
14 he swore to protect.

15 In discussing son how not to get caught he  
16 told Adrian Lamo OTR, off the record, is good but  
17 change fingerprints every few weeks, fingerprints  
18 dealing with the OTR. It's not frequently used by  
19 terrorists. So it's not a priority to find a crack.  
20 That's page 18, Your Honor. Prosecution Exhibit 30,  
21 the Lamo chats. Page 18.

1                   Page 38, Your Honor, the hardest part is,  
2   arguably, Internet access. Unloading any sensitive  
3   data over the open Internet is a bad idea since  
4   networks are monitored for any insurgent, terrorist,  
5   militia and criminal types. He makes that admission.

6                   These statements lead to only one conclusion,  
7   Your Honor, from Pfc. Manning's action in that the enemy  
8   would receive this information from WikiLeaks --  
9   through WikiLeaks. He showed his knowledge again in  
10   this inevitable conclusion when he started to think  
11   about getting caught with Adrian Lamo.

12                  He tried to justify his actions to myself and  
13   Mr. Lamo by saying -- Your Honor, this is at page 33.  
14   It was publicly damaging, but didn't increase attacks  
15   or rhetoric. Pfc. Manning continued to try and inform  
16   the narrative. There is absolutely no evidence, Your  
17   Honor, no evidence that the accused thought the enemy  
18   may not get the information as Defense has tried to  
19   imply through the discussions of intelligence caps.  
20   The evidence the court has heard about intelligence  
21   caps, that is, information that has not been confirmed

1 through intel sources, information we still need more  
2 of to confirm.

3 Every single witness, Your Honor, has  
4 testified about the terrorists using the Internet and  
5 have if classified information on the Internet, they  
6 will find it and use it.

7 The Defense's conclusion is not rationale,  
8 it's not reasonable. It's fanciful. Pfc. Manning knew  
9 what would happen and through his indiscriminate  
10 harvesting and leaking of valuable information he made  
11 sure that it did happen. He ensured that Al Qaeda  
12 could go to WikiLeaks and data mine that valuable U.S.  
13 intelligence information.

14 In order to be found guilty of Article 104,  
15 aiding the enemy, Pfc. Manning had to act of a general  
16 evil intent. The defense appears to be arguing that  
17 taking 700,000 documents from complete and partial  
18 databases is not acting in an indiscriminate way, it's  
19 whistleblowing because he could have taken millions of  
20 documents. One wasn't enough. Hundreds of thousands.

21 Your Honor, the United States offers you to

1 look at the evidence that Private First Class Manning  
2 didn't look at the information. He did not read every  
3 report. He understood what they were. He understood  
4 what the SigAct stood for. He dealt with SigActs every  
5 day. He did not read 251,000 Department of State  
6 cables in order to reveal something that typically a  
7 whistleblower would find, take up through their  
8 chain-of-command, go to their team leader, their squad  
9 leader, go to the chaplain, go to a JAG, go to an IG,  
10 exercise their rights under the Military Whistleblower  
11 Protection Act. Go to another government official.  
12 That's what a whistleblower does, Your Honor, because  
13 after that doesn't happen they're left with no other  
14 resort.

15 That's not what Pfc. Manning, Your Honor.  
16 He found something he knew, he knew would get published  
17 on-line because it was significant enough, his own  
18 words, and the readme.text file [Inaudible] significant  
19 enough that WikiLeaks would post it. He put in  
20 searchable form and put it out there.

21 He called it interesting stuff with Julian

1     Assange. Stuff, not I found information that I have  
2     determined has been withheld from the public purposely.  
3     I've exercised every option I have. No, he found  
4     something he thought was interesting and that Julian  
5     Assange would publish. That's on page 4, Your Honor,  
6     of the chats, the Assange chats, PE 123.

7                     He said Adrian Lamo, page 47, "I'm not sure  
8     whether I'd be considered a type of a hacker." It's  
9     not the government's words calling him a hacker, his  
10    words -- whether he considered a hacker, a cracker, a  
11    hackavist, a leaker or what.

12                    Your Honor, he did contact the FOIA office  
13    when he found a video that he believed was responsive  
14    to a FOIA request. The E-mail address of the FOIA  
15    office was on the material that he allegedly reviewed  
16    according to the chat logs.

17                    Instead, he doctored a video for maximum  
18    impact and helped WikiLeaks release that to get that  
19    impact. That's not the act of a whistleblower. He  
20    will not approach his command-of-chain, as I mentioned  
21    before, about the SigActs he read or the NCD cables at

1 the GITMO [Inaudible].

2 He did not reach out to a congressman about  
3 the abuses he allegedly saw. Instead, he gave Julian  
4 Assange a mountain of classified U.S. government  
5 information that he had never even read every document.  
6 A video that was encrypted that he had admitted to  
7 giving. The one thing in dispute in this case, Your  
8 Honor, is the time. He admitted to giving an encrypted  
9 video he didn't even watch, Your Honor, for maximum  
10 impact. That's not the act of a whistleblower.

11 And care, Pfc. Manning did not care about  
12 anyone but himself, Your Honor. First, he betrayed  
13 every soldier who relied on him with classified  
14 information. He cared so deeply about them that he  
15 stole even their identities and gave those or  
16 potentially, at least, put them on his computer. He  
17 stole the identities within the SigActs, soldiers down  
18 range, how we rescue or tried to rescue. Fine, DSWU  
19 soldiers, duty status whereabouts unknown, the  
20 procedures we followed, unit identifiers, battle roster  
21 numbers.



1                   He cared so much for his aunt, Your Honor,  
2   he left an SD card with 417,000 classified documents at  
3   her house with a smiling photo of himself on it in  
4   January of 2010. That was not a tremendous display of  
5   concern for others.

6                   He cared about our values so much he turned  
7   his back on his flag, Your Honor, not caring about the  
8   soldiers he served with, not caring about his  
9   government. He cared about no one but himself, even  
10   talked about how he was screwing up everything else for  
11   the world and he watched it as it went by, all this  
12   while knowing, Your Honor, that our enemies, the  
13   terrorists, are using the Internet and providing that  
14   information to them.

15                  Finally, Your Honor, trust. Well, the  
16   United States government trusted Private First Class  
17   Manning and he signed documents and practiced  
18   originally. Showing his trust and confidence we have  
19   in him, he was trusting WikiLeaks. Instead of the  
20   American flag, he placed his trust and allegiance in  
21   WikiLeaks and Julian Assange.

1           Even professor Benkler stated, Your Honor,  
2   that WikiLeaks is a place where a leaker can go and the  
3   leaker can trust that they won't be revealed. That's  
4   where he placed his trust, Your Honor. He had two  
5   contact numbers, as I mentioned yesterday. More  
6   information about WikiLeaks, a threat to national  
7   security or a lifeline to WikiLeaks. Which way did he  
8   choose, Your Honor? He chose to trust WikiLeaks and  
9   get them that information so he would not be found out  
10   until he was finally -- he laid low, his words from the  
11   Lamo chats, until he was out of the Army and then he  
12   could come forward and claim his fame.

13           Your Honor, Pfc. Manning watched the whole  
14   thing unfold from a distance, Lamo chats, page 34. He  
15   knew it would be plastered all over the world press  
16   what he did. Lamo chats 9. He knew that the  
17   information he compromised affected everybody on Earth,  
18   line 9 Lamo chats. He knew the world's reactions as he  
19   sat on his satellite interaction connection we  
20   discussed all while witnessing the world freak out at  
21   its most intimate secrets being revealed. Yet not a

1 well intentioned solder, not a naive solder, Your  
2 Honor.

3 He knew the scope of his actions. He knew  
4 the size of his audience. In fact, he said now I'm  
5 quite possibly on the verge of being the most notorious  
6 hackavist or whatever you want to call it. It's all a  
7 big mess and I've created it.

8 He even knew, Your Honor, that it's actually  
9 wrong because he knew he would be compared to Major  
10 Nidal Hasan. His words, Your Honor, Lamo chat page 24.

11 Your Honor, Pfc. Manning knew what WikiLeaks  
12 was. He knew they published all classified information  
13 because he researched WikiLeaks and talked to Julian  
14 Assange. He knew that information existed forever on  
15 WikiLeaks because they had mirror websites, websites  
16 that propagated the information forever on the  
17 Internet.

18 He wanted the world to see the information he  
19 compromised. He knew the world watched the Apache  
20 video in late April. He knew the world saw the  
21 Reykjavik cable within three days of him compromising

1 it and the reaction the world had.

2 Based off that, Your Honor, he knew the world  
3 would see the NCD cables once he released them and he  
4 was right because even Osama Bin Laden saw them.

5 Your Honor, aiding the enemy has been a crime  
6 since the founding of this nation. It is a crime based  
7 on the duty one owes to his country. Private First  
8 Class Manning as a soldier voluntarily embraced a  
9 higher duty when he swore an oath to defend this  
10 country and his fellow soldiers. But he didn't like  
11 his fellow soldiers, he didn't like that the United  
12 States information secret because it gave the U.S. an  
13 edge. "It gave us an edge." Lamo chats 40.

14 So he said he didn't care about the flag and  
15 he compromised hundreds of thousands of documents in  
16 the pursuit of his anarchist pathology.

17 THE COURT: Well, Article 104 is any person  
18 offense, right?

19 MS. OVERGAARD: It is, Your Honor. Is it  
20 any person offense, Your Honor, but in this case --  
21 that's actually a key point, Your Honor. This offense,

1    this case is of a soldier who's a trained intel analyst  
2    and is being charged under the UCMJ as a soldier who  
3    did this.

4                   So yes, Your Honor, the Pfc. Manning is a  
5    soldier who first swore an oath to this country and  
6    then signed a non-disclosure agreement in order to get  
7    access to classified information. Not every soldier,  
8    Your Honor, has that ability.

9                   Your Honor, he did this all wanting the  
10   whole world, including Al Qaeda and Al Qaeda of the  
11   Arabian peninsula, to see everything he compromised and  
12   he knew they would. That, Your Honor, is the general  
13   evil intent and that is aiding the enemy by giving  
14   intelligence.

15                  Thank you, Your Honor.

16                  THE COURT: All right. Let's take a brief  
17   recess. I want to go over with the parties or, if  
18   you're ready to do it now, let me know, whether the  
19   parties see any lesser included offenses. I know we  
20   went over this months ago but just to clarify for the  
21   record to make sure we're all squared away and whether

1 either side sees any special defenses raised.

2 You want to take a recess before we do  
3 that?

4 MR. COOMBS: Yes, Your Honor.

5 MR. MORROW: Your Honor, we have a couple  
6 of other things that we'll talk to the defense about,  
7 scrubbing of the record. We've got some exhibits that  
8 aren't signed by you but were admitted. So I don't  
9 know if you want to...

10 THE COURT: Why don't we just clean all of  
11 that up, then. How long of a recess do you think it's  
12 going to require to do all of that? Just to give  
13 everybody a heads-up, my plan is to go straight into  
14 deliberations after we finished all of this for some  
15 time this evening.

16 When the court -- so people know, when the  
17 court opens -- goes into deliberations, what happens is  
18 I told both parties that one lawyer has to be there for  
19 each side and Pfc. Manning can be there unless he waives  
20 his presence. And it's basically a pro forma thing. I  
21 get in in the morning and we open the court, we close

1 the court for deliberations. Everybody else leaves. I  
2 stay.

3 When I come out of deliberations for lunch  
4 or some other reason, we call everybody back in. We  
5 open the court, we recess the court, and then when I  
6 come back to deliberate we do the same thing.

7 Where I'm going with this is we're not  
8 doing anything substantive other than that at periods  
9 during the day unless the Defense requests oral  
10 argument on Monday morning with respect to the motion  
11 to reconsider the 641 issue or I'm ready to announce a  
12 verdict. And once that becomes -- I'm going to let the  
13 parties know that I'll be ready to announce a verdict  
14 and I won't do it until the next day. So that means  
15 there will be enough notice to go out that anyone who  
16 wants to come and be present can do that.

17 Is that satisfactory to the parties?

18 MR. COOMBS: Yes, Your Honor.

19 MR. FEIN: It is, Your Honor. The command  
20 will also do a press release once the parties so the  
21 public and the media will be notified.

1           THE COURT: Okay. So people are free to be  
2 here when we open the court, we close the court, we  
3 open the court and we recess the court, but I just warn  
4 you now it will be a five-minute experience.

5           How long of a recess do I need?

6           MR. COOMBS: Just ten minutes for the  
7 Defense, Your Honor.

8           MR. MORROW: Your Honor, would you like the  
9 exhibits?

10          THE COURT: Yes.

11          MR. MORROW: Probably 20, ma'am, enough for  
12 the public to also come and go and then we'll pull the  
13 exhibits out.

14          THE COURT: All right. The court is in  
15 recess, then, until five minutes to 5:00.

16          THE CLERK: All rise.

17          (There was a recess taken at 5:14 and the  
18 trial resumed at 5:36 p.m.)

19          THE CLERK: All rise.

20          THE COURT: Please be seated. The court is  
21 called to order. Let the record reflect that all



1 parties present when the court last recessed are again  
2 present in court. I met briefly with counsel in  
3 chambers to discuss what we will be discussing now on  
4 the record.

5 First of all, have either side -- does  
6 either side see any lesser included offenses? We have  
7 the lesser included offenses for the  
8 641 specifications, 4, 6, 8, 12 and 16 already in the  
9 instructions.

10 With respect to the only 793 echo  
11 specification that the accused has not -- Pfc. Manning  
12 has not entered a plea to is the specification 11 of  
13 charge 2; is that correct?

14 MR. COOMBS: This is correct, Your Honor.

15 THE COURT: All right. So there's  
16 potentially a lesser included offense for that  
17 specification in line with Pfc. Manning's earlier pleas,  
18 the same type of thing.

19 Does either side see that raised?

20 MR. COOMBS: Yes, Your Honor, as long as it  
21 is -- if the court were convinced that that happened in

1 November of 2009, then the Defense would agree that if  
2 the Court determined that the 793 mens rea requirements  
3 for the prohibitive purposes wasn't met. You could  
4 have an LIO that's consistent with at least the other  
5 793s for that date.

6 If the court determines that it did not  
7 occur in the November timeframe, instead in the 2010  
8 timeframe, the Defense's position is that would not be  
9 a lesser included or an acceptable variance.

10 THE COURT: All right. So the Defense's  
11 position is that would be a fatal variance because the  
12 government has proceeded on their theory that this  
13 occurred in November.

14 MR. COOMBS: Yes, Your Honor.

15 THE COURT: All right. Does the government  
16 agree?

17 MR. COOMBS: Yes, ma'am.

18 THE COURT: So if I find it occurs in  
19 April, it's not guilty. If I found that it occurs in  
20 November, then it's either guilty or a lesser included  
21 offense, right?

1 MR. COOMBS: Yes, ma'am.

2 MR. FEIN: Yes, Your Honor.

3 THE COURT: And the last one I see is for  
4 specification 16 of charge 2. The government advised  
5 me that they weren't going forward with the version,  
6 that the government theory was basically a theft -- a  
7 steal or purloining had occurred when Pfc. Manning moved  
8 the 740,000 addresses to his personal computer.

9 Now, does either side see attempted  
10 conversion raised to the evidence?

11 MR. FEIN: Yes, ma'am. The United States  
12 does see an attempt to -- the conversion aspect of the  
13 641 offense. I think the evidence has at least raised  
14 to the level for an attempt mostly because for the  
15 conversion at least in the theory that has been  
16 accepted for the other offenses, that once the  
17 transmission occurred, then there's been an actual  
18 conversion and the evidence has been raised to the  
19 point of the actual transmission. So that would be an  
20 intent.

21 THE COURT: Defense?

1                   MR. COOMBS: Your Honor, the Defense does  
2 not see any evidence that would raise the intent. The  
3 Defense's position, all we have is that he put it on  
4 his computer and then deleted it. So we don't see an  
5 attempt at conversion because of the requirement for  
6 conversion for substantial interference. So that's the  
7 Defense's position.

8                   THE COURT: All right. Government, you  
9 advised me early that you weren't going forward on the  
10 theory of conversion.

11                   Did I misunderstand you?

12                   MR. FEIN: One moment, Your Honor.

13                   THE COURT: Because that's in my last order  
14 on 641.

15                   MR. FEIN: Ma'am, we actually didn't  
16 understand that portion of the order. We didn't ask  
17 the court to reconsider. We do not remember actually  
18 saying we wouldn't go forward on the conversion theory.  
19 But we didn't argue that based on the court's order.  
20 We do think there's at least an attempt there, Your  
21 Honor.

1           THE COURT: Well, if you are going forward  
2 with the conversion theory, how are you going to have  
3 an attempt at conversion?

4           MR. FEIN: Well, it's under the court's  
5 order that there could be a completed conversion, Your  
6 Honor. Under the court's order, there could be a  
7 completed conversion which is why the government did  
8 not contest the court's previous order based off of  
9 what --

10          THE COURT: My order on 641 said that the  
11 government wasn't going forward with the conversion.

12          MR. FEIN: Correct, Your Honor. And that  
13 was not necessarily what we remember our position  
14 being. But we didn't ask the court to reconsider that  
15 finding because we thought the evidence was sufficient  
16 for the other portions to go forward on purloining and  
17 stealing.

18                 But to answer your question just now, an  
19 attempt could still be there because the ultimate  
20 conversion theory would require the transmission of it  
21 and if that's the case, Your Honor, then there is an

1 attempt because the information was on his personal  
2 computer and could have been -- that's an overt act and  
3 a substantial step.

4 THE COURT: So while the government is not  
5 going forward with a completed conversion, the  
6 government is going forward with an intent at  
7 conversion?

8 MR. FEIN: Yes, ma'am.

9 THE COURT: All right. I'll consider that  
10 as a lesser included offense.

11 So we have basically, then, the lesser  
12 included offense for the 641 specifications less than a  
13 thousand dollars, attempt at conversion for  
14 specification 16 of charge 2 and the lesser included  
15 offenses in accordance with Pfc. Manning's plea for  
16 specification 11 of charge 2 assuming I find this in  
17 November of 2009?

18 MR. COOMBS: Yes, Your Honor.

19 THE COURT: All right. Does either side  
20 see any additional lesser included offenses raised by  
21 the evidence?

1 MR. COOMBS: No, Your Honor.

2 MR. FEIN: No, ma'am.

3 THE COURT: Neither do I?

4 Special defenses. Does either side see any  
5 special defenses raised?

6 MR. COOMBS: No, Your Honor.

7 MR. FEIN: Could I have a moment, Your  
8 Honor?

9 THE COURT: Yes.

10 (Pause.)

11 MR. FEIN: I'm sorry, Your Honor. The  
12 United States is reviewing your previous order from 8,  
13 June 2012 and I guess there is one --

14 THE COURT: Which order is that?

15 MR. FEIN: I'm sorry, Your Honor. This is  
16 the lesser included order dated 8, June 2010 of  
17 Exhibit 143.

18 THE COURT: Okay.

19 MR. FEIN: And that's the clause 1 and  
20 2 lesser included for the charge 2 specifications.

21 THE COURT: Okay. Well, Pfc. Manning has

1 already pled to the 793-E specifications. You mean for  
2 the 641 specification and...

3 MR. FEIN: Yes, ma'am, and the 1030.

4 THE COURT: Well, the 1030 offenses, I  
5 thought Pfc. Manning already pled guilty to the clauses  
6 1 and 2 variance.

7 Are you talking about clauses 1 and 2 for  
8 the greater offenses, just Xing out the statute?

9 MR. FEIN: Sorry, ma'am. I'm just looking  
10 through the order...

11 THE COURT: Remember, that order was before  
12 Pfc. Manning's employ.

13 MR. FEIN: Yes, ma'am.

14 So just for the 641s, Your Honor, and then  
15 for specification 11 of charge 2.

16 THE COURT: Well, let's assume -- I've  
17 taken judicial notice that 18 of the United States code  
18 641 exists. So I'm trying to picture under what  
19 circumstances would you have other elements taken out  
20 and have just a clause 1 and clause 2 offense left.

21 (Pause.)



1                   THE COURT: Are you talking about the  
2 information ruling that I gave before? Is that the  
3 basis for this?

4                   MR. FEIN: Your Honor, that ruling is  
5 what -- I was thinking about it because you can have an  
6 act necessarily without value. There wouldn't be a  
7 theft. So it wouldn't be an act and it couldn't be  
8 prejudiced [inaudible] discrediting.

9                   THE COURT: All right. Defense?

10                  MR. COOMBS: I understand the government's  
11 position, then. The LIO would only be in a situation  
12 where no value has been proven and you would X out, I  
13 guess, the statute or 641. So a specification would  
14 just read -- for example, using specification 6, for  
15 example. Everything with the exception of the actual  
16 code section and then still say it's [inaudible]  
17 discipline, kind of a two-year violation.

18                   Is that the government's position?

19                  MR. FEIN: Yes, ma'am. It would be a  
20 taking without value.

21                  THE COURT: If you had a taking without a

1 value, wouldn't that -- are you saying a taking without  
2 a thing of value or a taking without a value?

3 MR. FEIN: Can we have a moment, Your  
4 Honor?

5 THE COURT: Yes.

6 (Pause.)

7 MR. FEIN: Your Honor, the United States  
8 doesn't see it as lesser included. Sorry about that.

9 MR. MORROW: We are not proceeding with a  
10 no value lesser included offense with respect to the  
11 18USC 641 license, Your Honor.

12 THE COURT: All right. I ruled in my order  
13 that even if information -- I don't have the ruling in  
14 front of me. All right. Well, what the court, in  
15 essence do is find conduct prejudicial to the good  
16 order and discipline even though not in violation of 18  
17 United States code 641 based on the elements as they  
18 are in the charge sheet.

19 Do both sides agree to that?

20 MR. FEIN: Your Honor, the court could do  
21 that.

1           THE COURT: So, I mean, it is technically a  
2 lesser included offense.

3           MR. COOMBS: I think the defense's  
4 position, then, would fall back to our previous  
5 argument. We would object to it being a lesser  
6 included because of preemption in Article 101 if there  
7 wasn't the federal provision.

8           So it would be, basically, a taking offense  
9 and our position would be that that Article 134 is  
10 preempted.

11          THE COURT: All right. The court -- I know  
12 what you're argument was before. Should I come back  
13 with something looking like that for the 641 offenses,  
14 I'll reconvene the court and we can address that.

15          How about that?

16          MR. COOMBS: Yes, Your Honor.

17          MR. FEIN: Yes, ma'am.

18          THE COURT: All right. Is there anything  
19 else we need to address before we close the court for  
20 deliberations?

21          MR. FEIN: Ma'am, I actually -- I

1 interrupted you when you asked about special defenses.  
2 May I finish that portion?

3 THE COURT: Okay. Does either side see any  
4 raised?

5 MR. COOMBS: No, Your Honor.

6 MR. FEIN: No, ma'am.

7 THE COURT: Neither do I.

8 When I close the court for deliberation,  
9 that basically means that everybody will be leaving the  
10 courtroom area which my deliberations area, I'm going  
11 to assume is the courtroom including my chambers in the  
12 area in the back.

13 Now, if I need classified evidence, how do  
14 I get it?

15 MR. FEIN: Ma'am, Sergeant Coats (phonetic)  
16 will be here and he'll have access to all the  
17 classified evidence.

18 THE COURT: Okay. And the rest of the  
19 evidence is all here?

20 MR. FEIN: Yes, ma'am.

21 THE COURT: Okay. Is there anything else

1     that I'm --

2                   MR. FEIN:   Actually, ma'am, if we could  
3     have a quick moment.

4                   THE COURT:   Okay.

5                   MR. FEIN:   Yes, ma'am, they're all right  
6     there and the classified ones are in the court's or  
7     Sergeant Coats will be able to get for you.

8                   THE COURT:   Thank you.

9                   One question I did have on the exhibits.  
10    Have both sides had an opportunity to look at the court  
11    reporter's latest prosecution and defense exhibit list  
12    to make sure that everything that you agree with,  
13    everything that's been admitted or not admitted? I can  
14    go through it briefly and talk about the not admitted  
15    exhibits?

16                   MR. COOMBS:   The Defense looked at it  
17    yesterday and had no problem.

18                   THE COURT:   Government?

19                   MR. FEIN:   One moment, please, Your Honor.

20                   (Pause.)

21                   Ma'am, I think we're going to look at it

1 one more time just based off the information that was  
2 fixed in the last recess just to clarify that.

3 THE COURT: Well, that -- I have -- if  
4 you're looking at Prosecution Exhibits 31, alpha and  
5 bravo and 32, 32 alpha and bravo, I have them all  
6 listed as admitted for the prosecution exhibit list.  
7 Well, let's just go briefly to make sure.

8 I have prosecution Exhibit 10 which is  
9 documents for the dry run witness. That was not  
10 admitted.

11 MR. FEIN: Yes, ma'am.

12 THE COURT: Prosecution Exhibit 15, bravo,  
13 substitute for Apache CD. Not admitted.

14 MR. FEIN: Your Honor, if I can have a  
15 moment...

16 THE COURT: Yes.

17 (Pause.)

18 MR. FEIN: Thank you, ma'am.

19 THE COURT: So you agree with 15 bravo not  
20 admitted?

21 MR. FEIN: Yes, ma'am.

1                   THE COURT: I have Prosecution Exhibits 33  
2 and 34 are marked, but they weren't offered or  
3 admitted.

4                   MR. FEIN: Yes, ma'am.

5                   THE COURT: And I have 37, CD backup XLSX,  
6 38 chat log and 39 screen shot of volumes text.

7                   MR. FEIN: That's correct, ma'am, because  
8 those were admitted at different times.

9                   THE COURT: So those are duplicates?

10                  MR. FEIN: Your Honor, 37 is not a  
11 duplicate 38 and 39 are duplicates.

12                  THE COURT: Okay. Then I have Prosecution  
13 Exhibit 44.

14                  MR. FEIN: That's correct, Your Honor.

15                  THE COURT: And Prosecution Exhibits 49 and  
16 50?

17                  MR. FEIN: Yes, ma'am.

18                  THE COURT: These are all not admitted.

19                  MR. FEIN: That's correct, ma'am. 49 was a  
20 duplicate.

21                  THE COURT: Okay. How about -- the next

1 one I have in the line is 53.

2 MR. FEIN: That's not admitted, Your Honor.

3 THE COURT: The next one I have in line is  
4 the acceptable use policy.

5 MR. FEIN: Ma'am, 57 was not admitted as  
6 well.

7 THE COURT: Okay, that's right, 57.

8 The next one I have is the acceptable use  
9 policy, figure B1, Army regulation 25-2. I mean,  
10 technically, it wasn't admitted but I've already taken  
11 judicial notice of the regulation.

12 MR. FEIN: That's correct, Your Honor.

13 THE COURT: Okay. Prosecution Exhibit 96?

14 MR. FEIN: Yes, ma'am.

15 THE COURT: Prosecution Exhibits 100 and  
16 101?

17 MR. FEIN: Yes, ma'am, although, Your  
18 Honor, 100 was a duplicate and a later one was  
19 admitted.

20 THE COURT: And Prosecution Exhibits 104 to  
21 105?



1                   MR. FEIN: I'm sorry. One moment, please,  
2 Your Honor.

3                   (Pause.)

4                   Yes, ma'am. I'm sorry, correction. 100 is  
5 not a duplicate. 100 was admitted. It was just  
6 admitted during the rebuttal case and 104 was admitted  
7 as well.

8                   THE COURT: I don't have those marked as  
9 admitted. So let's double-check.

10                  (Pause.)

11                  All right. I have Prosecution Exhibit 100  
12 as admitted and Prosecution Exhibit 104 also is  
13 admitted.

14                  Defense, any issues? I've got my initials  
15 on them.

16                  MR. COOMBS: No, Your Honor.

17                  THE COURT: The next one is line is -- you  
18 understand Prosecution Exhibit 101 and 105 have not  
19 been admitted?

20                  MR. FEIN: That is correct, Your Honor.

21                  THE COURT: Next one down the line is

1 Prosecution Exhibit 121.

2 MR. FEIN: Yes, ma'am.

3 THE COURT: And the next one I have in line  
4 is Prosecution Exhibits 195 alpha and bravo.

5 MR. FEIN: That's correct, ma'am.

6 THE COURT: And 197.

7 MR. FEIN: That's correct, ma'am.

8 THE COURT: Defense, I have as not admitted  
9 defense exhibit alpha.

10 MR. COOMBS: Yes, ma'am.

11 THE COURT: Defense exhibit hotel in India.

12 MR. COOMBS: That is correct.

13 THE COURT: Defense exhibit November?

14 MR. COOMBS: Yes, ma'am.

15 THE COURT: Defense Exhibit Quebec.

16 MR. COOMBS: Yes, ma'am.

17 THE COURT: Defense exhibit DD.

18 MR. COOMBS: Yes, ma'am.

19 THE COURT: Defense Exhibit GG?

20 MR. COOMBS: Yes, ma'am.

21 THE COURT: Defense Exhibit JJ?

1 MR. COOMBS: Yes, ma'am.

2 THE COURT: Defense exhibits TT?

3 MR. COOMBS: Yes, ma'am.

4 THE COURT: And UU?

5 MR. COOMBS: Yes, ma'am.

6 THE COURT: And defense exhibits XX all the  
7 way down to the rest of the remaining exhibits which I  
8 think is up to BB?

9 MR. COOMBS: That is correct, ma'am.

10 THE COURT: All right. So are there any  
11 final issues we need to address before I close the  
12 court for deliberations?

13 MR. COOMBS: No, Your Honor?

14 MR. FEIN: No, ma'am.

15 MR. COOMBS: All right. The court is  
16 closed.

17 THE CLERK: All rise.

18 (Court closed at 5:36 p.m.)

19

20

21

	<b>17:21</b>	<b>57:1,16;65:19;68:12; 69:19</b>	<b>approval (1)</b> 27:3
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